

**Members**

Sen. Connie Lawson, Chairperson  
Sen. Sue Landske  
Sen. Billie Breaux  
Sen. Allie Craycraft  
Rep. Kathy Richardson  
Rep. Robert Behning  
Rep. Thomas Kromkowski  
Rep. Ed Mahern



# **CENSUS DATA ADVISORY COMMITTEE**

*Legislative Services Agency*  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

**LSA Staff:**

Robert Rudolph, Attorney for the Committee  
Chris Baker, Fiscal Analyst for the Committee

**Authority:** IC 2-5-19

## **MEETING MINUTES<sup>1</sup>**

**Meeting Date:** September 6, 2005  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St., Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Sen. Connie Lawson, Chairperson; Sen. Sue Landske; Sen. Billie Breaux; Sen. Allie Craycraft; Rep. Robert Behning; Rep. Thomas Kromkowski; Rep. Ed Mahern.

**Members Absent:** Rep. Kathy Richardson.

### **(1) Call to Order.**

The Chair, Senator Lawson, called the meeting to order at 1:10 p.m.

### **(2) Introduction of Members.**

Senator Landske, who was not present at the first meeting, introduced herself.

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1. Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

**(3) Information regarding Census Bureau presentation on October 19.**  
(Maureen Bard & Mark Stratton)

The Chair advanced this item from its place on the agenda schedule. The Chair recognized Mr. Mark Stratton, Co-Manager of the Office of Census Data of the Legislative Services Agency to provide information about the Committee's October 19 meeting with officials from the Census Bureau.

Mr. Stratton distributed materials to the Committee.<sup>2</sup> Mr. Stratton stated that both the Census Bureau and the State of Indiana had an interest in obtaining an accurate and complete count of Indiana's population at the 2010 Census. He said that the purpose of the meeting with the Census Bureau was to discuss ways to realize that goal. Mr. Stratton said that the distributed materials<sup>3</sup> described the information the Census Bureau wished to provide and the issues that would be discussed at the October 19 meeting.

The Chair indicated that the Committee would meet with the representatives of the Census Bureau at 10:00 a.m. in the House Chamber on October 19 and that the Committee's regular business meeting would begin at 1:00 p.m.

**(4) Discussion of Provisional Ballots.**

The Chair recognized Brad King to discuss Preliminary Draft (PD) 3040 concerning provisional ballots.<sup>4</sup> Mr. King discussed eleven possible scenarios involving provisional ballots.

Referring to SECTION 8 of the draft beginning on page 3, line 21, Mr. King described the scenarios: Subsection (a) covers two scenarios where a voter has a certificate of error. In one scenario, the voter is not challenged while in the other, the voter is challenged. Subsection (b) covers two scenarios when the voter's name is not on the poll list. The difference in the scenarios is whether the voter is challenged. Subsection (c) covers scenarios when the voter's name is not on the poll list but the voter produces a registration receipt. Again the different scenarios arise depending on whether there is a challenge. Subsection (d) describes the scenario when the voter's name is not on the poll list and is challenged for any reason. Subsection (e) describes a voter whose name appears on the poll list, who no longer resides in the precinct, and is entitled to vote in the precinct under Indiana law in certain circumstances. Again the result depends on whether the voter is challenged. Subsection (f) describes the situation when the voter's name is on the poll list and is challenged for any reason.

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2. Mr. Stratton distributed a brochure from the Census Bureau "The 2010 Census Redistricting Data Program". A copy of this brochure is Exhibit #1 to these Minutes. He also distributed a document titled "Countdown to the 2010 Census Redistricting Data Program, Indianapolis, Indiana, October 19, 2005". A copy of this document is Exhibit #2 to these Minutes.

3. See particularly Exhibit #2.

4. A copy of PD 3040 is Exhibit #3 to these Minutes.

Senator Craycraft asked Mr. King if the draft was proposing that any challenged voter must vote a provisional ballot. Mr. King responded that Senator Craycraft's characterization of the draft was accurate.

Representative Mahern stated that he understood the purpose of the provisional ballot was to broaden the franchise, not to limit it. The Committee discussed with Mr. King and Ms. Robertson the relationship of the Help America Vote Act ("HAVA") to provisional ballots. There was also discussion of various practical aspects of challenges and use of provisional ballots.

A Committee member suggested that if the procedure described in the draft became law, there would be a great incentive to mount challenges to voters as a way to discourage voting. Mr. King stated that making a "malicious" challenge would be illegal. Representative Kromkowski asked how the threat of prosecution for maliciously challenging a voter would be a practical deterrent because proving that the challenger knew there was no basis for the challenge would be difficult. Representative Kromkowski said that many times a challenger could plausibly argue that the challenge was not malicious but only mistaken.

Representative Behning said that the number of challenges made would be one measure of whether challenges are being made maliciously. Representative Behning said that a single challenge is not likely to be malicious but many challenges or a pattern of challenges might suggest that challenges were not being made in good faith.

The Chair asked Mr. King whether there was any central reporting of challenges that could be analyzed. Mr. King responded that currently information relating to challenges is available only locally. He added that legislation enacted during the 2005 Session would require that a copy of each challenge be sent to the state.

Representative Mahern described a case involving a political group that sent mass mailing to voters in targeted precincts shortly before an election. Any mail returned as undeliverable was used as the basis to challenge voters as not living in the precinct in which the voters sought to vote. Representative Mahern asked how a decision whether a provisional ballot should be counted can be made solely on the basis of conflicting affidavits. He said he would much prefer a process of same day registration and inking the fingers of voters to prevent vote fraud over the procedure described in the draft.

There was discussion among Committee members as to what is demonstrated by mail returned as undeliverable. At the request of the Chair, Mr. King and Ms. Robertson explained in the context of voter registration the consequences to a voter when mail sent to the voter is returned as undeliverable. It was explained that one such mailing does not result in removal of a voter from the registration rolls.

Representative Kromkowski said that just as under our system a criminal defendant is not required to prove innocence, the burden should not be on the voter to prove the voter is entitled to vote.

Representative Behning observed that the United States Postal Service has a very low error rate. Representative Mahern responded that there are legitimate reasons that some individuals do not receive mail at their residences. There was discussion of the mailings sent by the Marion County Clerk to voters before the 2004 general election and the resulting litigation.

In response to Committee questions, Mr. King and Ms. Robertson said that the mail returned to the Marion County Clerk had not been destroyed and while the information contained in the mailings could not be used to update voter registration records before the 2004 election<sup>5</sup>, there was no apparent reason that the information could not be used to update voter registration information for upcoming elections.

Julia Vaughn, representing Common Cause of Indiana, said that consistency in election procedure across the state is important. She said she was concerned about the procedure suggested in the draft which she characterized as "when in doubt, give them a provisional ballot". Ms. Vaughn asserted that Indiana was among the five states with the lowest rates of counted provisional ballots. She said that HAVA intended provisional ballots to be the ultimate failsafe assuring that a voter could vote. Ms. Vaughn maintained that most problems relating to counting ballots are related to pollworker error.

The Chair stated that the Committee needs more information relating to challenges. In response to a question from the Chair, Linda Phillips, Tippecanoe County Circuit Court Clerk said that during the 2004 general election, 240 provisional ballots were issued in Tippecanoe County. Seventeen of those ballots were counted. Ms. Phillips said that none of those provisional ballots were issued as the result of a challenge. She said many were issued to voters who sought to vote in the wrong precinct.

The Chair asked the Indiana Association of County Clerks to provide information on these questions discussed by the Committee. Representative Mahern said that at the 2004 general election in Marion County, there were 1,800 provisional ballots issued of which 1,200 were not counted due to poll worker error and 300 were not counted because the voter appeared in the wrong precinct to vote. Ms. Robertson stated that Marion County did not issue provisional ballots to challenged voters. A voter challenged voter in Marion County was given a regular ballot after executing the required affidavit and complying with other statutory requirements.

Representative Mahern asked what has changed between 2000 and 2005 that would require giving all challenged voters a provisional ballot. He stated that the process of giving a challenged voter a regular ballot after the voter executes an affidavit is sufficient because the voter's affidavit is forwarded to the county prosecutor for investigation and possible prosecution.

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5. Because the mailing was sent out too close to the time of the election. See IC 3-7-38.2-2(a)(3).

Senator Breaux said that provisional ballots should be used only in extreme cases. Provisional ballots should not be used to make it more difficult to vote. The Senator said that the procedure illustrated by the eleven scenarios explained by Mr. King was too complicated for volunteer poll workers to handle much less for voters to understand.

**(5) Public Testimony.**

No member of the public present asked to speak to the Committee.

**(6) Distribution of preliminary drafts and other information.**

Staff distributed the following preliminary drafts and other materials:

PD 3044 relating to certification of election results.<sup>6</sup> Staff briefly discussed the draft and said that the draft was intended to address the concern raised by Representative Mahern at the previous meeting that the deadline for a provisional voter to present proof of identification is the same as the deadline to certify election results.

PD 3032 concerning technical election law amendments.<sup>7</sup> Staff explained that this draft relates to items #1 and #3 of the Co-Directors' August 8 memorandum to the Chair.<sup>8</sup> Staff also distributed an addendum<sup>9</sup> to the draft that addressed the amendment to IC 3-10-7-2 discussed in item #3 of the Co-Directors' memorandum.

PD 3045 concerning voter registration.<sup>10</sup> Staff explained that this draft addressed the issue discussed in item #5 of the Co-Directors' memorandum.

Staff distributed information gathered by the Election Division relating to organization of the election administration function in other states.<sup>11</sup> Staff also distributed preliminary information assembled by the staff of the Legislative Services Agency ("LSA") regarding this issue. Staff explained that the LSA material was not yet complete and supplemented the information gathered by the

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6. A copy of PD 3044 is Exhibit #4 to these Minutes.

7. A copy of PD 3032 is Exhibit #5 to these Minutes.

8. Please see Exhibit #2 to the Minutes of the Committee's August 16 meeting.

9. A copy of this document is Exhibit #6 to these Minutes.

10. A copy of PD 3045 is Exhibit #7 to these Minutes.

11. A copy of the Election Division chart is Exhibit #8 to these Minutes.

Election Division.<sup>12</sup>

**(7) Other Committee Business.**

There was no other business to come before the Committee.

**(8) Announcement of Next Meeting Date.**

The Committee's next meeting is scheduled for October 5 at 1:00 p.m. in Room 233 of the State House.

**(9) Adjournment.**

The Chair adjourned the meeting at 2:20 p.m.

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12. A copy of the LSA information is Exhibit #9 to these Minutes.